

[AU: Reviewer Comment: The Pasquetti paper is a wonderfully written and theorized piece. I would move this into publication as fast as possible. It will attract a great deal of productive attention, especially in this fraught period of migration "crisis." **]**

Annu. Rev. Law Soc. Sci. 2019. 15:X–X

[https://doi.org/ 10.1146/annurev-lawsocsci-101518-042609](https://doi.org/10.1146/annurev-lawsocsci-101518-042609)

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Law and Refugee Crises

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Keywords

humanitarianism, local context, justice, urban refuge, agentive theorization

Abstract

Refugees have an increasing global significance, as their numbers continue to grow and the nature of displacement continues to evolve. Different international, state, and local laws and policies play a part in refugee crises. On the one hand, then, it is important to theorize the role of the law in shaping different formations of displacement; on the other, it is also crucial to address how the people involved in these crises (government officials, street-level bureaucrats, forced migrants, and receiving populations) engage with the law. We highlight and develop three areas

of sociolegal inquiry that can push forward the study of the law and politics of refuge: (a) the uneven geography shaping the global humanitarian machine; (b) the local contexts within which such a machine operates, interacting with different actors' conceptualizations of justice; and (c) the distinct dilemmas that the urban environment poses to both refugees and humanitarians. Advancing these areas of sociolegal inquiry requires enriching established theoretical sources in refugee studies with both neglected ones, such as postcolonial theory and Pierre Bourdieu's sociology of forced displacement, and newer ones, such as Didier Fassin's anthropology of morality and pragmatic sociology of ordinary judgments of fairness.

INTRODUCTION

The world is facing the worst refugee crisis since the Second World War, as over 60 million people have been forcibly displaced through either wars, violence, or other forms of disenfranchisement. Refugees and other forced migrants have an increasing global significance, as their numbers continue to grow and the nature of displacement continues to evolve. Refugees have had a longer history across the world, but the emergence of a humanitarian system, the bureaucratization of refugee management, and its study from an academic perspective are newer phenomena ([Malkki 1995a](#)). Even though contemporary policies on protecting and supporting refugees were created in the postwar period for European refugees, today the overwhelming number of refugees are created and hosted in the Global South. As such, protection regimes continue to expand and evolve to address the changing nature of forced displacement, including most recently the latest Global Compact on Refugees.

Different international, state, and local laws and policies play a part in these crises. On the one hand, then, it is important to theorize the role of the law in shaping different formations of displacement at the global, regional, and local level; on the other, it is also crucial to address how the people involved in these crises (government officials, street-level bureaucrats, forced migrants, and receiving populations) concretely engage with the law under different conditions. In this review, we highlight and develop three areas of sociolegal inquiry that can push forward the study of the law and politics of refuge in the twenty-first century: (a) the uneven geography shaping the global humanitarian machine; (b) the local contexts within which such a machine operates, interacting with, among other things, different actors' moral reflexivity and conceptualizations of justice; and (c) the distinct dilemmas that the urban environment poses to

both refugees and humanitarians. We advance these areas by suggesting an eclectic but fruitful collection of neglected as well as newer theoretical sources. These sources can help disentangle issues of scale, context, and agency in sociolegal studies of forced displacement and develop agentive and productive approaches to law and refugee crises. The overall aim is to open new global conversations on law and refugee situations that show how distinct geographies, structures, and experiences of refuge are shaped through different politics and dynamics at the global and local scales. We also aim to connect forced displacement to broader debates about law, control, justice, rights, and protection.

THE GLOBAL HUMANITARIAN MACHINE

Although refugees have had long histories through various parts of the world, the professionalization of managing them is a more recent phenomenon. Although there have been large flows of people from at least the sixteenth century, the responses to them were driven by charitable and religious organizations, often with the aim of religious conversion. The modern refugee regime, with its focus on social science-based management practices, developed in the twentieth century with the two World Wars ([Elie 2014](#), [Watenpaugh 2010](#)). A first attempt at protecting refugees came about after the First World War, particularly with the League of Nations. Refugees and stateless persons from this time were given Nansen passports to be able to travel. As Aleinikoff (2018a, p. 297) notes:

For many refugees who had no documentation from either their home State or hosting State, the Nansen Passport served as an identity card. The Nansen Passport did not guarantee entry to another State; admission would depend on the domestic laws and policies of that State pertaining to noncitizens. But it facilitated travel outside the borders of the State of asylum: receiving States would accept the document as adequate for purposes of identification, and asylum States would recognize the Nansen Passport as sufficient to permit re-entry of a refugee who had ventured abroad.

The League of Nations, which was set up to maintain world peace, was ultimately seen to be a failure in doing so, as it was unable to prevent the great powers from expanding into Manchuria or Ethiopia ([Pedersen 2007](#)) or to prevent a second world war from taking place. It was

succeeded by the UN system, which was created in the aftermath of the Second World War.

The 1951 Convention Relating to the Status of Refugees, which was developed at this time, remains a key instrument in the global protection of refugees. As is evidenced in its language, which is geographically and temporally restricted, it was designed to protect and support European refugees displaced owing to the Second World War. The Convention also gave birth to the UN High Commissioner for Refugees (UNHCR), which is the main UN body responsible for the protection of refugee rights. The Convention originally envisioned the refugee problem to be a temporary one and specifically related to Europe. However, as refugee crises continued to develop across the world, particularly as many countries threw off the yoke of colonialism, the scale and scope of the UNHCR's operations expanded. The Convention was modified through the 1967 Protocol to reflect these changes. The Convention's language continued to reflect the politics of a specific period, as it extended protection to those fleeing owing to well-founded fear of persecution based on five enumerated grounds: race, religion, nationality, political opinion, and social group. In other words, the Convention still does not protect those fleeing war, mass violence, or foreign aggression, which are often the causes of displacement in the Global South. However, regional protocols such as the Cartagena Convention and the Organization of African Unity (now African Union) cover these instances ([Hathaway 1990](#), [Musalo et al. 2001](#)). In regions such as Asia, no such agreements exist, leaving refugees to the mercy of national governments, many of whom are not signatories to the Refugee Convention. As [Chimni \(2003\)](#), [McConnell \(2013\)](#), and others note, the 1951 Convention and the 1967 Protocol are seen by developing countries—who are the primary hosts of the majority of the world's refugees—to be Eurocentric and the regime too burdensome for them to carry. The term refugee also continues to primarily protect those fleeing violence rather than those fleeing natural disasters, though there have been moves to be inclusive toward climate refugees as well ([Aleinikoff 2018b](#), [Piguet et al. 2011](#)). The global management of refugees has therefore changed in tandem with geopolitical shifts ([Fiddian-Qasbiyeh 2016](#)).

This issue of what constitutes refugees raises further questions on the politics of labeling forced migrants. As Zetter (2018) notes, there is considerable debate on whether to refer to displaced populations as refugees, internally displaced people (IDPs), or other terms that carry very specific legal connotations, or whether they should be referred to as forced migrants, an umbrella categorization that captures the complex, multifaceted nature of displacement.

Likewise, Polzer and Hammond (2008) draw our attention to the politics of visibility and invisibility of persons of concern, as well as who is included and excluded, and by whom in different protection regimes (UN, host country, etc.) They ask rather provocatively: “What has been the impact of categorizing IDPs as displaced persons rather than citizens, thereby making the same individuals visible and actionable to different institutions under different rules and with different outcomes?” (Polzer and Hammond 2008, p. 417). Further, given the increasingly complex dynamics of migration trajectories, the logic and effects of the legal-political distinction between ‘forced’ and ‘economic’ migrants are also central to critical debates in migration studies (Castles 2003). Such questions lead us to query the politics not only of labeling, but also of the limits and scope of humanitarian interventions themselves (Krause 2014).

The global humanitarian system is highly uneven, with countries in the Global South bearing a disproportionate burden of hosting refugees for long periods of time. As [Bloch & Donà \(2018\)](#) note, by the end of 2016, 84% of the world’s refugees were hosted in developing regions. This is often a difficult task for these countries, as they struggle with limited resources themselves and receive inadequate support to host ever-increasing numbers of refugees ([Wall 2017](#)). Yet, the global governance of refugees continues to be skewed toward protecting the positions of wealthy countries in the Global North and limiting the number of refugees who are allowed to migrate there. Even within the Global North, restrictions are placed on how asylum seekers are able to migrate and where they are able to make asylum claims. In the European Union, for example, the Dublin Convention restricts asylum seekers to make claims in the first safe country. As many refugees make the journey over land and sea, these countries often end up being in Southern Europe. Many thus face limited possibilities of making claims; they become undocumented; or, as they attempt to journey forward, they are repeatedly returned to the first safe country ([Bloch & Donà 2018](#)). Thus, there is a concerted attempt in the European Union to contain the refugee issue within specific geographic spaces. Similarly, countries such as Australia have long used draconian policies toward refugees, detaining them indefinitely in offshore places such as Christmas Island, Manus, and Nauru. More recently, Australia has engaged in bilateral agreements with Indonesia and Cambodia to not only detain potential asylum-seekers but also resettle them ([Hyndman & Mountz 2008](#), [Mountz 2011](#)). As Milner & Wojnarowicz (2017) note, powerful countries, particularly in the Global North, use their institutional, structural, and financial power over weaker developing countries to maintain their hegemony over this system

of global refugee governance. Although this can be and is disrupted in various ways, continuing imbalances in supporting refugees remain.

More recently, in part as a response to the ongoing Syrian war, the migrant crisis in Europe, and the growing dissatisfaction of host states in the Global South, there has been a growing demand for more equitable burden sharing among countries across the world (Arar 2017). This has been followed up by attempts to modify the current humanitarian system, specifically through the Global Compact on Refugees and a separate Global Compact on Safe, Orderly, and Regular Migration, discussions of which began in 2016 ([Hansen 2018](#)). The Global Compact on Refugees was adopted by the United Nations General Assembly on 17th December 2018. This Compact formally confirms what states acknowledged in the 2016 New York Declaration for Refugees and Migrants: “a ‘shared responsibility’ to manage large movements of refugees, along with the need for a more equitable and predictable approach” ([Mandal 2018](#)). The Global Compact on refugees is led by the UNHCR, in contrast with the Global Compact on Migrants, which was drafted through negotiations between states ([Hansen 2018](#)). The Compact on Refugees builds on the 1951 Convention but looks to share responsibility and burden of refugees to address large movements of people and ease pressure on host states. It includes the Comprehensive Refugee Response Framework, which has four broad recommendations: for the Global North to ease pressures on host societies; for the global community to encourage and support refugee self-reliance; for states to expand third-country solutions; and, finally, for states to support conditions in countries of origin for refugees to return safely and with dignity ([Hansen 2018](#)). Although, as illustrated by the Compact on Refugees, the UNHCR’s response to the 2016 New York Declaration was positive, many, from nongovernmental organizations to academics and policy makers, have expressed deep cynicism. For example, Chimni (2018, p. 630) notes:

[The Compact on Refugees] avoids mention of the principal cause of recent refugee flows; dilutes established principles of international refugee law; may weaken the protection of children and women; is short on real mechanisms for responsibility sharing; is myopic in stressing ‘specific deliverables’ (para 43) in speaking of future academic work; and leaves to the United Nations High Commissioner for Refugees (UNHCR) the task of supervision which it is not equipped to perform.

Others have also viewed it as a missed opportunity for a concerted plan of action for the future, and a declaration that focuses mainly on abstract principles and in which some states have succeeded in stripping the declaration of all meaningful content (Amnesty International, Jane McAdam, and Alexander Betts, quoted in [Wall 2017](#)). The Compact on Refugees thus is seen as eroding the protection of those who are amongst the most vulnerable populations in the world, and moving away from the possibility of creating genuine global solidarity around the question of refugees (Chimni 2018).

There are emerging social science approaches to how the humanitarian machine works at the global scale. For example, in Sociology, Go and Krause (2016) propose a field analysis of transnationalism including within the arenas of humanitarianism and human rights, while Bhambra (2017) and Mayblin (2017) draw on postcolonial theory to trace the colonial legacy of refugee conventions and laws. However, the study of the global humanitarian machine ultimately remains a legal field (Campbell 2006, Guterres 2010, Landau 2018). Specifically, there has been much debate in legal scholarship on the shifts that have marked the protection of refugee rights to the protection of refugee bodies—in other words, a change from a human rights paradigm to a humanitarian one (Heller & Pécoud 2018). Scholars have also critically analyzed how the politics of donor states, located predominantly in the Global North, and of host states, located largely in the Global South, exert influence over this (Chimni 2000, Milner & Wojnarowicz 2017). A more current anxiety over protection mandates for refugees has been on the changing nature of refuge itself—from camps to cities, a trend that, as we discuss below, highlights the importance of studying displacement at the local level.

LOCAL CONCEPTIONS OF LAW AND JUSTICE

Although the humanitarian machine is often thought of as a structure that acts on a global scale, local contexts of displacement are increasingly recognized as equally important for the law and politics of refuge. This is not only because state law can modulate or, in certain areas, even replace international humanitarian law, but also because each local context carries specific lay understandings of the law and its legitimacy, which in turn influence how both international and state laws are experienced, interpreted, and implemented in specific situations. The sociolegal

scholarship on refugees would benefit from a more systematic attention to how all actors' engagement with the law is the result of moral assessments of the boundaries between what is legal and what is just. On the one hand, this engagement would allow us to better relate refugees with other legal categories of people, including nonasylum migrants and citizens. On the other hand, it would help elucidate how humanitarian interventions in refugee crises do not operate in a political-moral vacuum. This section retraces how these issues have so far been tackled in the literature and proposes some additional paths of inquiry.

A key tenet of sociolegal scholarship has long been that legal institutions are the expression of local history and national culture. Asylum laws have varied considerably across time, reflecting different conceptualizations of refugees as well as different ways of handling asylum applications ([Fassin & d'Halluin 2005](#), Fassin & Rechtman 2009, [Kneebone 2009](#), [Noiriel 1991](#), [Pratt & Valverde 2002](#)). Many studies conceptualize international human rights as an attempt to move toward the globalization—and thus the harmonization—of the law and, as a consequence, a limitation on the power of states ([Gammeltoft-Hansen 2011](#), [Guiraudon & Lahav 2000](#), [Jacobson 1996](#), [Sassen 1996](#), [Soysal 1994](#)). Some scholars, however, identify a gap between what international conventions say on paper and what happens in practice ([Gould et al. 2010](#), [Kneebone 2009](#), [Schuster 2003](#), [Squire 2009](#)). While this emphasis on the mismatch between what the law says and its implementation is an important reminder to address law and refugee crises from an empirical perspective, we also need to focus on the specific ways in which such a gap is produced, experienced, and contested in specific localities (e.g., [Su 2008](#)). We identify several scholarly trends moving in this direction.

The first looks at how international human rights and refugee laws are conceptualized and organized differently in different areas of the world, often leaving significant wiggle room to states to modulate international policies or substitute national laws to them ([Gammeltoft-Hansen 2011](#)). [Neumayer \(2005\)](#), for example, demonstrates how asylum seekers from the same country of origin have very uneven chances of obtaining asylum in different Western European countries. Similarly, comparing the acceptance rates of Chinese asylum seekers in the United States, Canada, and Australia, [Hamlin \(2012\)](#) shows how, despite international law providing common definitions and guidelines for the treatment of refugees, the Refugee Status Determination process varies considerably depending on where it takes place, including, as in this case, in states that have otherwise similar institutional, cultural, geographical, and political traits. International

human rights, therefore, do not work in the same way in every place (see [Soennecken 2008](#)). In countries that have not signed the Refugee Convention, the situation is even more complex. In Middle Eastern countries, which host a large share of today's displaced persons, refugee protection is seldom codified by law, or there are significant discrepancies between formal laws and unwritten norms and ad hoc practices (Mason 2011, [Sanyal 2018](#)). In addition, laws and their application vary not just from state to state but also in different areas of the same nation. In the case of Lebanon, for example, alongside the coexistence of checkpoints and other security measures operated by very different institutional actors, municipalities also have significant leeway in their response to refugees and the enforcement of administrative decisions ([Sanyal 2018](#), p. 72, see also Gotman 2004 and Bontemps et al. 2018 for examples in the Global North).

A second approach looks at how people at the receiving end of the law—be they refugees, asylum seekers, documented or undocumented migrants, or regular citizens in host countries—deal with the law in general, and with asylum law more specifically. This is a rich body of literature that contains some internal variations of its own. One strand looks at how refugees and migrants navigate, respond, and, at times, contest state taxonomies and regulations (Abrego 2011, Coutin 2001, [Ewick & Silbey 2003](#), [Gonzales 2008](#)), including the under-explored question of how asylum seekers who have their applications rejected negotiate everyday life and access to rights ([Sawyer & Blitz 2011](#)). This scholarship shows how, far from being passive recipients of the law, migrants actively interpret and act upon it. However, migrants' relationship with the law is often interpreted as a blanket “strategy” ([Saltsman 2014](#)) to cope with a mostly disembedded bureaucracy (but see Spire 2007), rather than as the result of multiple actors' moral reflexivity embedded in specific situations.

Another strand focuses on how migrant communities maintain parallel systems of customary law, linking their conceptualization of the host legal system to the cultures of legality they were socialized into before migrating. This approach correctly emphasizes how what the law is, what it is for, and whether or not it is legitimate are interpretive questions that people address drawing on certain moral norms. However, this perspective runs the risk of creating a dichotomy between migrants' “culturally conditioned” attitudes to the law and the supposedly neutral, modern, and “normal” legal contexts they find upon arrival (Ballard 2010, quoted in [Kubal 2013](#), p. 57). Part of the problem comes from the focus having too often remained on “static” conceptualizations of the law, rather than considering these as the result of a process shaped by interaction. Drawing

on [Silbey's \(2005\)](#) theory of legal consciousness, for example, Holzer ([2013](#), pp. 838, 866) makes the interesting point that, even when it proves ineffective, the law always leaves a trace on how refugees think about their social worlds. [Ryo's \(2017\)](#) discussion of how migrants' interactions with host societies' laws and authorities shape migrants' legal socialization, and how it may ultimately foster legal cynicism, also goes in this direction. However, there is no reason to think that this would apply only to refugees and migrants: Interactions leave a trace on how all actors think about their social world. Along these lines, the saliency of the local dimension lies not only in the uneven implementation of the law or the availability of legal services in the settling areas, but also in the conceptualizations of law, justice, and morality that emerge within different local groups in interaction.

To tackle this complexity, some scholars have looked more closely at the plurality of normative orders that guide people's lives on the ground beyond formal law. In her theory of semi-autonomous social fields, [Moore \(1973\)](#) highlighted the coexistence of (and relationship between) formal legal orders and other nonlegal but obligatory normative orders (see also [Merry 1988](#) on legal pluralism). Drawing on Moore's theory to investigate the effects of refugee resettlement soft law in Uganda, Bergtora [Sandvik \(2011\)](#) shows that, although global humanitarian norms are intended to have a homogenizing effect, they in fact engender a highly heterogeneous system that combines multiple sources of formal and informal norms on the ground. Likewise, looking at how irregular migration is handled in the Mediterranean, [Basaran \(2015\)](#) points to the complex coexistence of securitizing immigration laws, the established humanitarian duty to rescue at sea, and the informal norm of the "governing of indifference" that characterizes liberal societies. Holzer (2015) offers an original ethnographic approach to clashing conceptions of justice between camp refugees and humanitarians and its implications for political protest and repression in refugee camps. The question then becomes what norms prevail in what situation, and why.

To answer this question, scholars may benefit from shifting the focus even further, moving from the study of local conceptualizations *of law* to the study of local conceptualizations *of justice*. In other words, it is important to address how the legitimacy of the law is assessed against the backdrop of alternative and potentially competing moral norms and values. Further, most studies discuss how people—whether migrants or hosts—relate to the law as a whole. However, people in practice produce varying evaluations of different aspects of the law. In her

study of legal noncompliance, for example, [Ryo \(2017\)](#) finds that unauthorized migrants violate—and justify violation of—only certain kinds of law but not others. In particular, Ryo’s informants justify noncompliance with US immigration law by referring to alternative and, in their view, higher moral obligations (for example, the need to provide for their family; also, Kyle and Siracusa 2005). Although this constitutes a significant advancement in scholarly conceptualizations of legal legitimacy, in most cases, actors’ justifications of illegality are analyzed through the lens of neutralization theory ([Sykes & Matza 1957](#)). In other words, claims to higher principles of justice are analyzed as strategies people use to “rationalize” their “deviant” behavior (see [Cook 2011](#)). These rationalizations, according to Sykes & Matza’s (1957, p. 669) theory, are “extensions of patterns of thought prevalent in society”; that is, they are drawn from “a repertoire of culturally acceptable legitimations.” Another option, however, instead of reducing actors’ justifications to instances of strategic rationalization, is to take these justifications seriously and to consider them as an expression of the actors’ moral judgment [see Barthe et al. 2014, Boltanski & Thévenot 2006 (1991), [Lemieux 2009](#) for a theoretical discussion on this point].

Very useful insights into actors’ sense of justice are provided by the formal labels used to categorize migrants and refugees. As mentioned in the previous section, many scholars have correctly emphasized how terms like economic migrant, refugee, and asylum seeker are deeply politicized ([Agier & Madeira 2017](#), [Crawley & Skleparis 2018](#), Kyriakides 2017, Sigona 2018, [Zetter 1991](#); [2007](#)). Needless to say, these terms have real-life implications for the people who are labeled as such, and these implications are likely to endure over time (Feldman 2012). However, informal labels may also play an important role. In particular, many scholars have discussed the related, albeit distinct labels of victim and deserving migrant in categorizing asylum seekers and refugees (Fassin & Rechtman 2009, [Hall 2010](#), [Holmes & Castañeda 2016](#), [Kobelinsky 2012](#), [Ong 2003](#), [Sales 2002](#), [Taylor 2016](#); see also [Mazouz 2012](#) for a discussion of “deservingness” in the context of citizenship naturalization). What remains underexplored is the extent to which, despite the terms being the same, the content of these labels may vary depending on locality, as they are expressions of a specific social group’s assessment of what justice would look like in a specific situation ([Casati 2018](#), [Debono 2011](#), [Tassin 2014](#)). The “good Other” ([Enns 2012](#)), in sum, looks different in different places, and these differences provide us with insights into the cognitive operations that feed into moral judgments (see also [Rozakou 2012](#) for

a discussion of how seemingly universal principles such as that of hospitality are also shaped by local definitions).

An important consequence of taking ordinary moral judgments seriously is the realization that humanitarian interventions in refugee crises do not operate in a political-moral vacuum but in areas charged with specific ways of conceptualizing responsibility and victimhood. In this sense, [Davis's \(1992\)](#) call for the creation of an “anthropology of suffering” proved to be particularly important in the field of law and refugee crises. Fassin & Rechtman (2009), for example, speak of the “compassionate ethos” that characterizes modern societies, whereby the attention that is accorded to “trauma” tells us less about the actual subjectivity of the “victims” than about the conceptualizations of justice that are legitimized by our societies at this time (see also [Dauvergne 2005](#), [d'Halluin 2016](#), [Fassin 2006](#)). Although so far the question of suffering and deprivation has been directed almost exclusively at understanding migrants' experiences, we agree with Colson ([2003](#), p. 11; see also [Brun 2010](#)) when she states that “a great deal more research needs to be carried out on what happens to those who willingly or unwillingly become hosts, whose lives are changed by the arrival of the uprooted.” This also entails looking at the specific relationships that link citizens with their own state (Balibar & Wallerstein 1991, [Casati 2016](#)) to understand the specific grievances and conceptualizations of victimhood that are produced locally ([Pasquetti 2016](#), [Sales 2002](#), [Whyte et al. 2018](#)). Such an approach to justice is crucial in understanding what factors influence locals' perception of—and, potentially, competition with—refugees ([Casati 2018](#), [Kreibaum 2016](#)), and thus also how integration may look different in different places.

Nevertheless, scholars should be particularly wary of fixing or culturalizing local conceptualizations of justice. It is important to keep in mind that the precedence given to nonlegal moral norms over compliance with the law varies in situation. Put differently, conceptualizations of justice should be analyzed not only as “locally grounded” but also as “situationally grounded.” As Boltanski [[2012](#) (1990), p. 33] puts it, “We are in a position to understand the actions of persons when...we have grasped the constraints that they have had to take into account, in the situation in which they found themselves, to make their critiques or their judgments acceptable to others.” We return to the relevance of this point in the theoretical conclusion.

DECAMPMENT AND URBAN REFUGE

Another way to study how the global humanitarian machine works in specific contexts is to take seriously the spatial dimension of its logic, implementation, and effects. This focus on space helps going beyond refugee camp formations. For example, cities have historically provided refuge for those forcibly displaced but have, under modern systems of managing refugees, been overlooked or viewed with a certain degree of skepticism ([Landau 2018](#)). This is not entirely unsurprisingly, as the management of refugees has, since the Second World War, privileged a camp model. Camps are seen to be more efficient sites for the management of refugees, where aid can be delivered more effectively and refugees can be sequestered to maintain security for the host state ([Black 1998](#)). The question of security has also been central to why refugees are discouraged from moving to urban areas ([Fábos & Kibreab 2007](#)). However, in the past decade or so, the UNHCR has recognized the increased presence of urban refugees and shifted its attention toward addressing their needs (Darling 2017, [Landau 2014](#)). Indeed, although refugee camps remain the primary technology of managing refugees, the majority of the world's refugees are now living in urban areas (Kihato & Landau 2016), seeking employment, safety, anonymity, and opportunities that cities offer to its residents. Still others self-settle outside of camps in areas that often remain hidden from view and are deprived of the support that NGOs and others provide to official camps (Bakewell 2014, Sanyal 2018). Further, localities of refuge increasingly include rural and other 'new destinations' (Whyte et al. 2018).

Thus, at a time when refugees live in a variety of different settings, it is useful to take a comparative perspective and ask whether those who are living in refugee camps and those who are living in cities are subjected to the enforcement of the law in the same ways, or whether the law is enforced equally at the scale of the neighborhood and at the scale of the subnational or supranational region ([Sanyal 2018](#), p. 68). This comparative perspective can help understand how refugee laws and policies are variably enforced and experienced in different sociospatial contexts (Malkki 1995b, Platts-Fowler & Robinson 2015, Spicer 2008). Licona & Maldonado ([2014](#), p. 523), for example, argue that “threats produced by the “regime of deportability” are salient and even exacerbated in/by the rural context.” Similarly, [Fawaz \(2016\)](#) calls for rethinking notions of temporality and spatiality to avoid preconceptions in the study of refugee crises and better embrace the “messiness” of the changing socio-spatial realities of

displacement.¹

This comparative perspective is also promising for enriching theoretical work on refugee camps. In refugee studies, as we discuss in the concluding theoretical section, a significant strand of scholarship, drawing on philosopher Agamben's work [1995 (1998)], has focused on the specificities of camps [Agier 2008 (2011), 2014; [Ek 2006](#); [Minca 2015](#)]. This scholarship typically conceptualizes refugees and refugee camps in negative terms, as “missing” some key urban or political parts ([Agier 2002](#), [Hanafi & Long 2010](#), [Hyndman 2000](#), [Malkki 2002](#)). Recent works have problematized this negative approach to camps by conceptualizing them as political spaces and their inhabitants as political agents (e.g., [Ramadan 2012](#), [Redclift 2013](#), [Sigona 2015](#)). Yet, more attention needs to be paid to legal citizenship and refugee status in comparative perspective. Further, the comparison of urban and camp life for dispossessed populations across legal statuses remains mostly unaddressed (but see [Pasquetti 2015a](#), [Sanyal 2014](#)). These comparative analytical exercises would help raise necessary questions about the relative thinness or strength of legal citizenship and refugee status in specific cases, for example when marginalized populations live in camp formations ([Picker & Pasquetti 2015](#)) or when they deal with different agencies of control, ranging from military and security agencies to humanitarian organizations ([Pasquetti 2015b](#)).

Scholars are also increasingly interested in studying refugees and the urban poor together as many refugees live amongst the urban poor, especially in cities in the Global South. By drawing distinct groups together, this interactional approach helps break off dichotomies between refugees and citizens, raising questions about meanings and acts of citizenship beyond legal status ([Isin & Nielsen 2008](#), [Sanyal 2014](#)). Further, this approach recognizes that refugees do not live in worlds apart. By contrast, they often co-exist and interact with other impoverished groups in the same city if not the same neighborhood (Landau 2006).

Whether comparative or interactional, the study of urban refugees raises important theoretical issues, such as redefining the idea of refuge as an urban phenomenon, considering the limitations placed on refugees outside camps, and rethinking the freedoms traditionally associated with

¹ This emerging comparative agenda on localities of refuge resonates with comparative work being done on the infrastructural and other practical opportunities and limits that undocumented migrants find in different settling areas (Abrego 2014, Dreby & Schmalzbauer 2013, Schmidtke & Zaslove 2014).

cities ([Bagelman 2016](#), [Pasquetti 2015a](#), [Pasquetti & Picker 2017](#)). It calls into question ideas of urban citizenship, political and civil society, and humanitarian spaces (Bontemps et al. 2018). It also asks us to consider futures and imaginations of refuge, including what it means to shift toward a privatized, fragmented, informalized system ([Sanyal 2017](#)).

Put differently, the urban environment emerges as a key site for understanding structures and experiences of refuge in the twenty-first century. It raises a range of theoretical and practical challenges to questions of protection, rights, mobility, processes, and politics of urbanization, as well as the futures of humanitarianism more generally. There are also logistical challenges for aid organizations attempting to support refugees in cities. These range from questions of finding refugees in urban areas when they may want to remain invisible, to the complexity of delivering humanitarian aid, to working with local authorities and communities so as not to upset existing governance structures, maintain a “do not harm” ethos, and improve relations between refugees and local populations. Each of these in itself is a complex challenge and interlaced with the other issues. For example, humanitarian organizations have to learn how to intervene in urban areas which requires a model that is rather different from the camp models that they may be used to. Rather than creating a system from the bottom up as they would in camps, humanitarians have to engage in “context analysis”, understand messy urban politics, and work out how to intervene through already existing systems (Campbell 2018; see also Phillimore & Goodson 2006 for a discussion on the specificities of resettling refugees in deprived urban environments).

As mentioned above, cities are also sites where living arrangements for refugees are often fragmented, informalized, and privatized. This is due to urban refugees’ precarious legal status as well as to the private and often informal housing systems already existing in the cities where they settle. Refugees live in a range of different spaces throughout cities, including formal and informal settlements. In countries such as Lebanon, where the government has refused to build refugee camps for displaced Syrians, refugees have received privatized forms of support (Sanyal 2017). In other words, individuals have privately rented out land, dwellings, and structures for housing; hired Syrian workers; or provided them with other services, both formally and informally. This has been supported through aid coming through the humanitarian sector. Although the informal sector and private initiatives offer a flexible approach toward accommodating the refugee crisis, they also impose restrictions on refugees. For example, landlords can at whim place restrictions or burdens on refugees, or evict them. State authorities

can and do often arbitrarily fine, detain, or otherwise harass refugees on account of their ambiguous legal status ([Coddington 2018](#), [Fábos & Kibreab 2007](#), [Grabska 2006](#), Mason 2011, [Sanyal 2018](#)). Much of this is done in the name of security but creates a precarious situation for refugees who are at the mercy of landlords, local communities, and host governments to survive through exile. This situation is prevalent not only in Lebanon but elsewhere as well ([Coddington 2018](#), [Sanyal 2018](#)).

In the Global North, the processes of privatization and informality have also been intertwined with questions of urban refuge for some time. In Canada, for example, a privatized sponsorship program for refugees has been running parallel to a government-assisted program since the late 1970s. The program has evolved over time, and Canada has more recently sought to export the model through the world ([Hyndman et al. 2017](#)). In the United Kingdom as well, refugee management, including housing and reception, has been privatized and subcontracted out to private companies, with significant implications for the governance of asylum in the country ([Darling 2016](#)). Furthermore, asylum seekers have also been forced to move to different housing sites or languish in a location for prolonged periods of time while waiting for their cases to be decided (Kobelinsky & Makaremi 2008). Because decisions on asylum cases can take a long time, refugees are stuck in a state of limbo with little or no control over their mobility or time ([Gill 2009](#), [Griffiths 2014](#)). In many instances in the United Kingdom, Canada, and other countries, we also see the emergence of homeless refugees, who face particularly precarious conditions ([Kissoon 2010](#), [Phillips 2006](#)).

What we are witnessing, therefore, is the emergence of a new model of decampment of refugees in both the Global South and the Global North and the concurrent privatization of refugee responses. This trend is emerging alongside the extension of the camp model from the Global South to certain areas of the Global North, such as Europe, where formal and informal camp formations for asylum seekers have increasingly changed local physical and legal environments [Agier et al. 2019 (2018), Bouagga & Barré 2017, [Katz 2017](#)]. The current juxtaposition of urban decampment and camps for the displaced merits closer attention from scholars and practitioners.

THEORIZING LAW AND REFUGEE CRISES

Advancing these three areas of sociolegal inquiry requires new efforts at theorizing material and

symbolic connections between structures and experiences of refuge, as well as broader changes and conflicts at the global and local level. Established theoretical sources typically theorize forced displacement as a destructive force for the social lives and political subjectivities of forced migrants, and conceptualize the management of displacement as a top-down, disempowering process that approximates what happens in what [Goffman \[1990 \(1968\)\]](#) calls “total institutions.” For example, [Arendt \(1973, p. 297\)](#) theorizes refugees as people who have lost, along with legal citizenship, a protective political community. She opposes the “thinness” of human rights to the supposedly more solid protection given by legal citizenship. With a focus on space, [Agamben \[1998 \(1995\)\]](#) theorizes camp formations as spaces that extinguish political life.

These sources are still relevant today, because they draw attention to the difficulties that refugees face in negotiating their lives in the context of complex bureaucracies and in a world of nation-states and passports where noncitizens are increasingly perceived through security lenses ([Coutin 2011, Torpey 2000](#)). Yet, they theorize refugees and other forced migrants mainly in negative terms (as if the fundamental features of their lives are invariably what they miss vis-à-vis citizens) and in disconnection from broader societal processes and conflicts (as if they inhabit worlds apart). By doing so, they do not fully address the question of the productive powers of forced displacement: What types of practices, subjectivities, and relationships does forced displacement produce? How does it impact not only refugees but also the people they meet during their journeys and where they settle? How does it interact with both legal norms and moral-political ideas surrounding not only migration but broader issues of justice and fairness in society? How and to what extent does it inflect and complicate postcolonial citizenship regimes?

Addressing these questions requires agentic and productive theoretical work on refugees within broader histories, structures and experiences of power, membership, and access to rights. This theoretical work is inherently interdisciplinary, entailing a problematization of boundaries between disciplines and subfields (see, e.g., Fitzgerald and Arar 2018 for a discussion of how we can and should break the divide between the sociology of migration and refugee studies). In this concluding section, we offer an overview of four possible points of departure for such theoretical work.² First, we can build on postcolonial theory to inject a sense of historicity in the study of the

² The four theoretical sources we outline here – postcoloniality, Bourdieu’s practice theory, Fassin’s anthropology of morality, and pragmatic sociology of ordinary moral reflexivity – have different, at times conflictual, epistemological perspectives on the production of knowledge, the construction of the object of research, reflexivity,

legal frameworks used today for categorizing, extending humanitarian aid, and possibly granting rights to displaced people (Bhambra 2017; Mayblin 2017). Postcolonial theory can also help to “provincialize Europe” (Chakrabarty 2000) and recognize debates emerging within southern states in the theorization of global displacement (see, for example, the question of decampment in the Global South and how it might impact the management of displacement in the Global North). In other words, the study of law and refugees would benefit from approaching sociolegal formations of displacement along the lines of Comaroff and Comaroff’s (2012, p. 47) argument about the Global South as a “relation, not a thing in and of itself.” The same can and should be said about the Global North. This point resonates with Roy’s (2009; 2015, p. 201) call for “new geographies of theory” that mobilizes postcolonial theory to recognize societies from the Global South not just as empirical field sites but as key sites for theorization.

Overall, given its emphasis on scalar relationships and its critique of the search for unified wholes, postcolonial theory works well as antidote in legal studies of displacement to assumptions about the exceptionality of certain cases and the representational power of others. It problematizes the tendency to look at case studies in isolation from others and in ahistorical ways. At the same time, it helps think through different case studies of displacement without lumping them together to get closer to a presumably generalizable and substantialist approach to the essence of refugee camps or modern humanitarianism. Within this approach, scholars have studied how changes in the legal taxonomies of people living in postcolonial societies, for example from colonial subjects to postcolonial migrants and refugees, are intertwined with the history of decolonization and the emergence of the international refugee system [Cosemans 2018, Mamdani 2011]. Further, historians have drawn out the histories of humanitarianism arising not only from the western world, but also from non-western contexts (Calhoun 2010, Chatterji 2011, Kaur 2007, Watenpaugh 2015, Zamindar 2007).

Second, we can excavate Bourdieu’s sociology of forced displacement from his work on colonial rule in Algeria [Bourdieu 1962 (1958), 1979 (1970); Bourdieu and Sayad 1964, 2004]. Specifically, Bourdieu’s work on the displaced Algerian peasantry under French rule highlights

and the location of the scholar in the broader socio-political world, etc. Our aim here is to offer a valuable contribution to new theorizing about the relationship between the law and refugees. We do not aim to put forward an integrated theoretical framework. That said, we do see the potential of putting into dialogue some of these theoretical approaches to advance the study of law and refugees, and law and society more generally.

two dimensions of law and refugee crises that we have emphasized in this review: the interplay between the legal and the spatial dimension of displacement and the theorization of forced migrants' subjectivities beyond what they have lost and what they miss. With his analysis of where the displaced Algerian peasantry was forced to resettle, Bourdieu anticipated much of the current sociolegal interest in comparing and connecting camp and urban formations of displacement. Specifically, he compared how the Algerian peasantry resettled in camps and those resettled in cities responded differently to the loss of the rural environment in which they could "strive to make [themselves] at home (Hage 2013, p. 87; see also Wacquant 2018a, pp. 94-96).

Further, Bourdieu grappled with the productive powers of displacement as he studied the layered and contradictory subjectivities of the displaced Algerian peasantry. He did so by developing the concept of habitus as "embodied history" ([Bourdieu 1990, p. 56](#)); that is, as a sequenced and stratified formation of "lasting dispositions, or trained capacities and patterned propensities to think, feel, and act in determinate ways, which then guide them [social agents] in their creative responses to the constraints and solicitations of their extant milieu" (Wacquant 2016, p. 65). With the concept of habitus, Bourdieu looked for a theoretical language to make sense of the multifaceted impact of colonial rule, capitalism, and forced displacement on the Algerian peasantry: "Nowadays, it is an entire people, uncertain how to move on, who is stumbling and faltering... 'dispeasanted' peasants (*paysans dépayannés*)...who carry within themselves all the contraries" (Bourdieu and Sayad 2004, p. 463). [Bourdieu's \(2000, p. 160\)](#) attention to processes of "destabilization" of the habitus "torn by contradiction and internal division" under conditions of forced displacement makes his theory of practice particularly powerful for studying everyday life and sociability in contemporary refugee crises. In this view, the Algerian case remains a historical case study that is still relevant today (see Pasquetti 2015b for a Bourdieu-inspired analysis of experiences of displacement and control in the Palestinian case).³

Third, Fassin's intellectual project, the anthropology of morality, offers important conceptual tools for recognizing the centrality of forced displacement in the world today, as a phenomenon

³ More generally, a Bourdieusian approach to forced displacement grounded in his sociology of colonial Algeria would contribute to rectify dominant interpretations of Bourdieu's practice theory, which are often oblivious of the key principles inspiring it (Wacquant 2018b) and typically downplay its attention to historical change (Steinmetz 2011), reducing it to a theory of social reproduction or to a theory of agonistic social interaction ([Martin 2003, p. 32](#)). It would also help put Bourdieu into dialogue with postcolonial theory (Go 2013, 2016).

that reveals, and thus calls into question, the moral underpinning of key state and global institutions. Fassin highlights how any given issue, in our case asylum migration, is surrounded by “moral economies” intended as “the production, circulation, distribution, and use of norms and obligations, values and affects” ([Fassin 2009; 2011](#), p. 486). Moral emotions of fairness are particularly important when people address the question of asylum migration. Although Fassin emphasizes the global and state-level circulation of moral emotions, these emotions can be conceptualized as multiscalar and, in line with the emphasis we have given to the local context of displacement as an active force rather than a passive background ([Fine 2010](#)), we think that Fassin’s definition of moral economy helps connect the global and local arenas of displacement as they might articulate law and fairness in different ways.

Further, [Fassin \(2013; 2015](#), pp. x–xi) draws attention to the connection between the moral and the political, studying what he calls “the moral life of the state” and paying attention to the “values and affects” (“justice, fairness, concern or indifference, empathy or indignation, admiration or distrust”) through which different state institutions govern precarious populations. The management of forced migrants, including both those living in camp formations and those facing bureaucracies called to adjudicate their asylum claims, fits well within this framework. This focus on morality unsettles the still-dominant assumption that modern state institutions, including law-enforcement agencies, are neutral and driven by rationality. Put differently, Fassin goes beyond “state realism,” that is, beyond those taken-for-granted “conventions, optics, and forms of power by which states represent themselves as standing for the general interest, in a realm ‘above’ society, as a rational, efficient, centrifugal, and meritocratic apparatus” ([Gupta 2015](#), p. 276). In this regard, he makes a similar move to the emerging scholarship on law and emotions, with its attention to the affective relationships that state institutions establish with different groups of people along axes such as race, legal status, and nationality ([Abrams & Keren 2010](#), [Pasquetti 2013](#)).

Fourth, pragmatic sociology offers a processual approach to human behaviors focused on everyday practices that can help us theorize displacement in connection with broader dynamics of law and justice in society. Specifically, although pragmatic sociology recognizes that the vast majority of human actions are carried out in a routinized manner, it places the emphasis on the indeterminacy of situations. Practice is conceived as a succession of tests (*épreuves*) of varying intensity, which may or may not be “passed” [Boltanski and Thévenot 2006 (1991), Callon 1989,

Latour 1988]. In other words, each action brings with itself an update, however minimal, of the actors' knowledge of the world—be it in the form of a modification of such knowledge or of an umpteenth validation and consolidation of it (Lemieux 2018, p. 41). Each new instance of an action—no matter how many times it has been repeated before—thus has the potential to upset its author's relationship with and conceptualization of the world. In this sense, for pragmatic sociology, a routine is not the repetition of the same thing but the reinforcement of a given belief, knowledge, or way of acting. When, for whatever reason, the action does not go as usual and the routine is disturbed, actors reassess the ways they previously used to engage with the world. Regarding ethical or legal issues specifically, pragmatic sociology thus places the emphasis on the ideals actors hold about the world and the moral competences they demonstrate in formulating and justifying them; however, it also strives to look at what happens when the ideal is put into practice and subjected to the test of reality.

The forced displacement of people, their movement across borders, and their settlement in other areas of the world can be seen as constituting a particularly sizeable test, not just for migrants themselves but for a wide spectrum of actors, including lawmakers, governments, national and international organizations, and receiving populations. In recent scholarship, we identify a growing interest in how the forced displacement of people engenders new questions around ethics and morality in law and policy ([Bulley 2017](#), [Essed et al. 2004](#), [Gibney 2004](#), [Sales 2002](#)). In such moments of moral tests, actors mobilize their moral competences to reassess their ideals and decide on how to act in a way that would be deemed just in that situation. In the field of law and refugee crises, this may become a collective endeavor, exemplified by the global debates surrounding the principles of justice that should prevail in international policies. On a smaller scale, it also includes, for example, the processes through which street-level bureaucrats reevaluate the weight that should be given to legal recommendations when responding to day-to-day moral dilemmas.

Pragmatic scholarship thus highlights the processual, interactional and indeterminate dimension of claims to justice, emphasizing how situations may lead actors to reflect on and, at times, openly discuss, the relationship between law and morality. Some actors, for example, will argue for the need to respect a given legal principle, others to give precedence to another legal principle, and still others will contend that the law on the matter is unfair and, as such, that it should not be respected and a different moral principle should be followed instead. Still, certain

propositions will ultimately be deemed more legitimate than others (Boltanski et al. 1984). The goal, then, will be to examine what types of social organization are more likely to promote or hinder the expression and legitimation of certain propositions [Boltanski & Thévenot 2006 (1991), Lemieux 2014].

Although this approach has not yet been applied explicitly and consistently to questions of asylum, or even migration more generally (but see [Moffette 2015](#) and Stavo-Debaugé 2017 for a first step in that direction), we identify a burgeoning interest in the literature in understanding the ideals of justice that inform institutional and civilian responses to refugee crises. These questions have inspired studies of asylum adjudication procedures and relational dynamics within reception centers, examining, for example, how the arrival of asylum seekers in a new town or neighborhood acts as a catalyst for both street-level bureaucrats' and ordinary people's reflections on justice and deservingness ([Casati 2018](#), [Kobelinsky 2012](#), [Thomas 2011](#)). Several recent studies have also set out to examine more specifically the ideals of hospitality, solidarity, and reciprocity that ordinary citizens may refer to in dealing with displaced people (Agier 2018, Brugère & Le Blanc 2017, [Debono 2011](#), [Frigoli 2007](#), Gotman 2001, [Heins & Unrau 2018](#), [Whyte et al. 2018](#)). In the field of law and asylum, future studies could explore, for example, how actors on the ground formulate their own denunciations of the law as unfair (or fair, for that matter) and under what conditions these are heard, embraced, or dismissed.

If we follow Thomas's concept of "crisis" as an event that "interrupts the flow of habit and gives rise to changed conditions of consciousness and practice" (quoted in Schütz [1944](#), p. 502), we can say that refugee crises pose multi-scalar dilemmas for those forcibly displaced and in search of protection, for those living in the places where forced migrants resettle, and for the legal institutions involved in managing the lives of forced migrants and mediating their relationships with other groups of people. In this review, we have discussed some theoretical sources that can help examine these multi-scalar dilemmas in historical, comparative and interactional ways. Specifically, these sources can help address three particularly important issues in law and refugee crises: the ever-evolving imbalances within the global humanitarian machines, the ever-increasingly varied local contexts of displacement, and the emergence of the city as a particularly salient site of refuge in the context of trajectories of decampment. These sources also highlight how a constant dialogue between theorizing and empirical work is crucial for improving our understanding of law and refugee crises.

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DISCLOSURE STATEMENT

The authors are not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

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